

**Before the**  
**SMALL BUSINESS ADMINISTRATION**

**In the Matter of**

**Proposed Rulemaking: Size Standards**

**RIN-3245-ZA02**

**COMMENTS OF MEDIA CAPTIONING SERVICES**

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Media Captioning Services ("MCS") is pleased to provide comments to the SBA re. proposed regulations related to size standards for small business. We will provide comments as follows::

- I. Background information-MCS
- II. Use of receipts-based size standards instead of Size-Based standards
- III. Size Standards for Federal Procurement
- IV. Importance of sub-categories such as very small business
- V. Size standards for very small business/smaller enterprise and need for tiered Standards
- VI. Affiliations with other business
- VII. joint ventures between small businesses in federal procurement
- VIII. SBIR - exclusion of VCC majority or controlled entities
- IX. Negative impact of granting exclusion for VCC affiliated companies

**I. Background Information- MCS**

Media Captioning Services ("MCS") provides real-time closed captioning of national and local news programming, for Deaf and hard of hearing television viewers.

Founded in 1987 by Patricia Ferrier of Los Angeles, MCS was the first woman-owned closed captioning company formed in the U.S. Closed Captioning provides access to

information by the process of creating text information from audio. The standard industry classification for real-time captioning is 561492, and for off line (pre-production) captioning is 512191. Closed captioning is a mandated service, per regulations issued by the FCC. However, until 2000, the primary source of funding for closed captioning was the Department of Education through grant and cooperative agreement programs. MCS has 15 employees, and 35 independent contractors. Our main office is in Carlsbad, Ca., with an additional office in Maitland (Orlando, Fl) suburb. Our gross revenues are less than \$ 2 million per year.

## II. Receipts based Standards vs. Size Standards

MCS believes receipts based standards are far more accurate in many smaller industries in determining relative size, market dominance and power than size-based standards. This is particularly true in technology and service based industries.

In our industry, for example, almost every company, including the 4 most dominant companies, have less than 25 million per annum in gross revenues.. Perhaps two of over 150 companies have over 100 employees, with over 140 companies averaging 3 or less employees . Most companies in our industry utilize independent contractors heavily, ranging from 90 percent in the case of the smallest companies to 40% in the case of the largest companies , which have 120 to 150 persons providing services to the companies. For purposes of seeking funding from the Department of Education, all are considered "small" companies. However, some companies in our industry which may have less than \$ 6 million in gross revenues ( under SIC 561492) have significant

business under SIC 512191, a related line of business. Such companies have predominated in the receipt of federal cooperative agreement awards from the Department of Education . Although small by the SBA SIC standards, they use market power and dominance in one facet of the industry (SIC 512191) to match or undercut very small businesses in competitive bidding for these discretionary awards. All companies in our business, out of financial necessity, have used independent contractors which gives them more control over operating expenses arising from declining profit margins in our highly competitive industry. Therefore, basing size standards on the size or number of employees in many service, technology based business is irrelevant in determining whether a business is truly small and and/or dominant in its business..

### **III. Size Standards for Federal Procurement**

MCS believes Size standards for Federal procurements should not be different than other size standards, for the sake of simplicity. We believe a business should be classified as small if it has \$ 25 million or less in gross receipts over the past year, irrespective of industry. However, when that base level includes the top three most dominant companies in an industry, or companies which, in aggregate , control 50% or more of the revenues in an industry, such companies may not qualify for a small business designation. Alternatively, a lower tiered standard, ie. \$ 6 million in revenues, might be the breakpoint for SBA small status.

### **IV. Importance of sub-categories such as very small businesses**

MCS believes the SBA program must contain provision for very small businesses. We would define a very small business as one with 15 employees and \$ 3 million or less in average annual receipts. As we have noted previously, we believe revenue is a better indicator of market power and company impact in an industry. A company might have 15 employees and 50 independent contractors and be capable of generating \$ 200,000 per employee, yet not be a significant factor in their industry. Using a receipts based standard would obviate the complexity of determining who is an employee, and unnecessarily burdensome FTE calculations for small, for-private private sector companies. A very small business designation (using receipts of \$ 3 million in gross revenues per year) would enable very small businesses to participate in federal procurement not limited to \$ 2,500 to \$ 50,000 in size. For example, the FCC in certain spectrum auctions, has reserved licenses for very small businesses, with a gross revenue cap of \$ 3 million dollars per annum used to determine very small business status. If very small businesses are to be encouraged to grow by having access to bid for federal procurements, they need to have the ability to bid for meaningful federal procurements.

#### V. Tiered Standards

MCS believes that the SBA should define as very small business as one with \$ 3 million in revenues per annum. In addition we support a standard for “smaller enterprises,” those having revenues of \$ 6 million or less in gross income and \$ 2 million or less in net income. This would continue to enable smaller companies to receive funding under the SBIC program.. MCS believes the size standard for all small businesses should be \$ 25 million or

less in gross income. In addition, if a company is a small business by such a measure under one industry SIC and has multiple business lines, the total revenues from related business SIC should be used to determine small business status. For example, in the closed captioning industry, all companies in our industry under SIC 512191 are small (less than \$ 25 mio per annum in revenues). However, at least three companies use their market dominance in the offline captioning industry SIC 512191 to obtain a high percentage of federal procurements (where cooperative agreements are used in lieu of contracts as the procurement tool) in competitive awards in SIC 561492.. If the gross revenues in both SIC's for each of the top three companies were aggregated, the annual gross revenues would more likely than not in the case of these three dominant companies in the industry exceed the \$ 25 million gross revenue per annum., and such companies should not receive small business status.

We strongly believe size standards for sub categories as noted above is necessary to assist small businesses in developing into competitive businesses capable of being successful on Federal procurements competed on a full and open basis. "Tiering" is essential to enable companies to grow by providing services to the Federal government. In many cases the Federal government may be the sole or dominant buyer of a product or service. In order for very small businesses to grow, and transition from receiving seed capital , to the next stage i.e. receiving "mezzanine" financing to enable them to put in place an infrastructure to enable them to scale business and make meaningful bids in federal procurements, we need tiered standards. MCS believes that separate Federal procurement size standards that are higher than current size standards would adversely affect the assistance of a particular segment of small businesses by extending assistance to relatively successful larger small and mid-sized

businesses. The larger dominant companies who may be small by SBIC standards but dominant in one or more related industries (as noted in the closed captioning industry as noted above) will use their size and power to aggregate resources to dominate in the Federal procurement process. This is the nature of business, and there is no effective regulation to prevent predation by the misuse of market power by these relatively successful larger small and mid-sized businesses. Therefore there should be no differentiation or separate size standards in Federal procurements, to allow a higher cap for more successful small businesses.

Also, the Small business Competitiveness Demonstration Program, while conceptually a good idea, does not appear to provide meaningful procurement opportunities for very small business. Not all Federal agencies are disposed to structure procurements of \$ 25,000 or less. We believe that the procurement size must be increased or the size standards modified so that a greater number of market participants (very small businesses, smaller enterprises) will defacto be competitive. If the purpose of SBA standards is to ensure fairness in the Federal procurement process, loans, and other business relationships with the Federal government, the standards (based on revenues) must be established so as to effectively exclude dominant small businesses from using their market power to dominate the procurement process, provide a more realistic measurement of whether Federal agencies are funding a greater percentage of businesses in industry groups to stimulate innovation, and enable such business to grow and or scale to increase their competitiveness in Federal and non federal procurements.

## **VI and VII Affiliations with other Businesses/ Joint ventures**

MCS believes small businesses should be encouraged to cooperate in joint ventures in Federal procurements. we believe joint ventures where members individually qualify as a small business ( including an aggregation test for each company, ie. all SIC's they are involved in) should be encouraged. MCS believes an ongoing joint venture should be limited to submitting offers on three procurements over a two year period, so the joint venture itself does not become a dominant entity in an industry. We strongly agree with the statement that joint ventures among small businesses facilitate opportunities for small businesses to compete for larger sized Federal procurements. However, if one or more members of a joint venture individually (by virtue of an aggregation test of SIC's they are involved in) no longer are a small business (defined as \$ 25 mio in gross revenues per annum) then they can no longer compete as a joint venture. We believe there must be a restriction on the number of federal procurement opportunities this joint venture can engage in. If such joint venture wishes to participate in more than three procurement opportunities (ie.. in a two-year period) the individual joint venture members must certify that individually and collectively they are not dominant participants in their industry. This will assist the SBA in addressing its concern that ongoing joint ventures among the same small businesses operating as a going concern) will not itself operate to the detriment or in a predatory manner toward other small businesses.

## **VIII. SBIR**

MCS strongly believes VCC majority or controlled entities should not be allowed to participate in the SBIR program. While VCC investment is crucial to certain startups, we



disagree that SBIR money should replace seed capital that VCC's can and normally do in the course of their business invest. WE believe the SBIR program should not provide seed capital to companies that can obtain such funding from VCC's. In our analysis of the SBIR requirements and comments we have received back commenters/reviewers on a previous application, the SBIR (as evidenced with their encouraging Fast track applications and or products that can be commercialized) is interested in funding products that can be commercialized. VCC's are interested in minimizing the risk of seed financing, as opposed to mezzanine financing where a company is seeking capital to scale production of a product with commercial potential. VCC's have a network of management expertise, which they can bring to smaller companies. Companies with access to VCC's have a significant competitive advantage in resources, potential distribution channel, and potential for distribution. However, many VCC backed companies - where seed capital is provided-fail. Many smaller companies, including companies which may have an innovative idea where the potential for commercialization is not as great, as opposed to providing a benefit to help the handicapped, or provide a technological solution for a specific application, face the prospect of being "crowded-out" for capital. The SBIR program should foster innovation and not become a proxy for seed capital venture capital activities.

If the SBIR program allows a business concern that is majority owned or controlled by one or more VCC's to be eligible for SBA awards, then our company will have no incentive to participate in SBIR financing, and we would recommend the activities of the SBIR as a proxy for the venture capital industry- in effect entering the venture capital industry with taxpayer

money- be subject to greater Congressional oversight. We strongly believe that an exclusion from affiliation for VCC's (and we would include non-profits engaged in substantially the same businesses as for-profit concerns) would adversely affect the ability of small business concerns including ours, without such access to private capital to compete for SBIR awards.